NOTES OF CASES.

Right of Accused to Consult with Counsel.—One H. S. Tucker was confined as a prisoner in Oklahoma, charged with a felony. Being without means to employ counsel to conduct his defense, the judge of the superior court appointed two local attorneys. The sheriff in charge of the jail where Tucker was confined refused to allow the attorneys access to their client, and persisted in his refusal after an order from the judge of the superior court. Thereupon a citation was addressed to the sheriff and the jailer of the prison, requiring them to appear before the Criminal Court of Appeals to answer for contempt. In a judgment adjudging them in contempt, the Criminal Court of Appeals in the case of State ex rel. Tucker *v.* Davis, 130 Pacific Reporter, 962, states in the following vigorous language the right of one accused of crime to receive adequate facilities for his defense: "It would be a cheap subterfuge of, and shameless mockery upon, justice for the state to put a man on trial in its courts, charged with an offense which involved his life, liberty or character, and then place him in such a position that he could not make his defense. It would be just as reasonable to place shackles upon a man's limbs and then tell him that it is his right and duty to defend himself against an impending physical assault. * * * Due process of law would be a libel on justice if it did not carry with it the absolute right of preparation for trial, the right to be informed of the nature and cause of the accusation against him, and have a copy thereof; would be only so much idle buffoonery, if the accused were not allowed to prepare to defend himself. * * * The right to be heard by counsel would, in the language of Saint Paul, 1 Cor. xiii, 1, 'become as sounding brass, or a tinkling cymbal,' if it did not include the right to a full and confidential consultation with such counsel, with no other persons present to hear what was said. This is a material, substantial right, essential to justice."

Admissibility of Confession by Third Person.—When one is on trial for murder is the confession of a third person who has since died, as for instance, a deathbed confession, that he committed the murder, admissible in behalf of accused? The Supreme Court of the United States in Donnelly *v.* United States, 33 Supreme Court Reporter, 449, has decided that declarations of this character are inadmissible as hearsay. An interesting dissenting opinion by Mr. Justice Holmes reads in part as follows: "The confession of Joe Dick, since deceased, that he committed the murder for which the plaintiff in error was tried, coupled with circumstances pointing to its truth, would have a very strong tendency to make any one outside of a court of justice believe that Donnelly did not commit the crime. I say this, of course, on the supposition that it should be proved that the confession really was made, and that there was no ground for

connecting Donnelly with Dick. The rules of evidence in the main are based on experience, logic, and common sense, less hampered by history than some parts of the substantive law. There is no decision of this court against the admissibility of such a confession; the English cases since the separation of the two countries do not bind us; the exception to the hearsay rule in the case of declarations against interest is well known; no other statement is so much against interest as a confession of murder; it is far more calculated to convince than dying declarations which would be let in to hang a man; and when we surround the accused with so many safeguards, some of which seem to me excessive, I think we ought to give him the benefit of a fact that, if proved, commonly would have such weight."

Rights of Negroes to Burial in Cemeteries.—Whether cemetery corporations may exclude negroes from burial is the question directly involved in People *v.* Forest Home Cemetery Co., 101 Northeastern Reporter, 219. The material facts are: The appellee cemetery is a corporation. Relator is a colored citizen. From 1890 to 1896, four of relator's children died and were buried in appellee's cemetery in single burial places separate from each other, relator not owning a lot. Later the corporation passed a resolution that after December 31, 1907, the cemetery would be maintained for the interment of the remains of persons of the white race only, but the remains of colored persons owning lots in the cemetery and their direct heirs should be admitted for burial in the lots owned by them. On March 16, 1912, the wife of relator died and he applied for space for the burial of her body, and permission was refused solely because it was the body of a colored person. He was ready, willing and able to pay the fixed charges for the accommodation asked for, but the privilege was denied, and the reason was explained in a letter stating that the officers had no personal prejudice nor ill-will toward the colored people, but there had been so much trouble and objection that it was for the best interest of the cemetery to exclude them. This proceeding in mandamus was then brought to compel the cemetery corporation to receive for burial the wife of relator. On appeal to the Supreme Court of Illinois, the court holds that a cemetery is not included within the terms of the statute which declares that all persons within the state shall be entitled to the equal enjoyment of the accommodation and privileges of enumerated places of public accommodation and amusement. It is also held that the refusal of the cemetery corporation did not infringe any of relator's rights under the state Constitution.

Fish in Waters Over Submerged Land.—Whether or not the fact that grants were subsequently submerged by a lake and became the bed of a navigable lake deprived the owners of the submerged land